

JOINT STATEMENT ON THE DRUGS BILL 2005

Release and Transform Drug Policy Foundation are two of the UK's leading independent sources of expertise on drug policy and law. This statement accompanies detailed briefings produced by Release¹ and Transform² on the Drugs Bill 2005.

We believe that the Bill is overly focused on criminal justice interventions that have a poor record of effectiveness. Arguments presented by the government to support these measures, specifically around deterrent effects and reducing availability are not evidence based. Some clauses risk breaching the Human Rights Act 1998, especially Articles 6 and 8 which provide for the right to a fair trial and the right to respect for a private life respectively.

There has been an unacceptable lack of consultation with key stakeholders in the drugs field on significant sections of the Bill, and it contains many ill-considered, populist, 'tough on drugs' measures, many of which will make little or no difference to existing legislation and practice or may be actively counter-productive.

The Bill is overly focused on criminal justice interventions that have a poor record of effectiveness.

- The Bill seeks to strengthen criminal justice responses to the drugs problem at a time when academic, NGO and parliamentary opinion is favouring responses that move away from a heavy handed enforcement approach.
- The government attempts to justify many of the proposed measures based on simplistic arguments that are unsupported by evidence.³ For example, repeated reference is made to the deterrent effect of harsher enforcement. It is also stated that increased arrests of dealers will lead to the reduced availability of drugs. No evidence is presented to support these contentions which, in reality, do not stand up to scrutiny. Since the introduction of the Misuse of Drugs Act 1971 (MDA 71), drug use has risen exponentially and drugs have become significantly cheaper and more widely available.
- The Bill takes a stage further the recent, massive expansion of coerced assessment and treatment through the criminal justice system. The evidence for

"We need to focus on making current treatment programmes more effective, not dreaming up new offences to shovel people into the system. Instead, we see both the Conservative and Labour parties in a pre-election pantomime trying to prove who's toughest on drugs. It flies in the face of the evidence. The key is that you punish the crime and treat the addiction – that distinction is starting to be lost through the war on drugs."

Lord Victor Adebawale
(CEO, Turning Point)
Daily Mirror, 22 November 2004

¹ http://www.release.org.uk/html/~master_menu/Our_Services/news.php

² http://www.tdpf.org.uk/MediaNews_LatestNews_14_01_05/htm

³ These arguments appear in the Final Regulatory Impact Assessment ("RIA") (www.homeoffice.gov.uk/docs4/RIA_drugs.pdf), a document produced by the Home Office to provide "a cost-benefit analysis of the Bill, as well as an analysis of the impact of the bill in respect of equity and fairness, enforcement, sanctions, monitoring, review and consultation." (para. 64, Explanatory Notes to the Bill).

the effectiveness of coerced treatment is extremely poor.

- The extent of the expansion of coerced treatment cannot fail to have a significant impact on the nature and effectiveness of drug treatment in the UK as a whole. Resources are already being diverted away from voluntary towards coerced treatment. The element of coercion has a fundamental influence on the relationship between the drug user and the treatment provider, running contrary to many widely recognised principles of effective treatment – namely confidentiality, flexibility and empathy, as well as – crucially – the recognition that change can only be effected by users themselves.

The Bill proposes changes in the law that would entail unacceptable violations of individual rights and risk breaching the Human Rights Act 1998 (HRA 98).

- The proposed introduction of mandatory testing on arrest for trigger offences⁴ - before charge - is disproportionate, unfair and contrary to the right to respect for a private life enshrined in Article 8 of the HRA 98.
- Proposals for increased police powers⁵ – to force entry into private premises for the purpose of serving civil proceedings - are a further example of disproportionate measures, contrary to the right to respect for a private life, introduced with no apparent consideration of their impact on the civil liberties of some of the most vulnerable members of society.

"Legislation, like tough talk, can be cheap. This Bill raises numerous civil liberties issues and contains a number of overbroad police powers but, in reality, will do little to target precious rehabilitation resources on those in greatest need."

Shami Chakrabarti
(Director, Liberty)
February 2005

- It is proposed⁶ that the burden of proof be reversed so that individuals who are found in possession of a certain quantity of an illicit drug will be presumed to have intent to supply the substance, unless evidence is adduced to raise an issue as to that presumption. We believe that this provision will be relevant in only a very few cases. However, the reversal of the burden of proof arguably runs contrary to the right to a fair trial under the HRA 98.

The Bill contains many ill-considered, populist, ‘tough on drugs’ measures that appear to have been shaped more by election-time political concerns, rather than the real concerns of key stakeholders in the drugs field or the legal profession.

- The proposal to introduce tougher sentencing for “aggravated supply”⁷ is pure window dressing, as it duplicates the courts’ existing powers and responsibilities when considering sentencing. This clause appeals to (largely misplaced) public fears about drug dealers outside schools, but will in fact make no difference to court practice.
- It is proposed⁶ that defendants accused of possession of an illicit drug should be presumed to have intent to supply where they are in possession of a quantity which has been assessed as unreasonable to possess for personal use. The clause contains a caveat which means that it may only be relevant in a very few cases⁸. Putting this to one side, quite apart from the civil liberties connotations of the proposal, it is both unnecessary

⁴ Clause 7, Drugs Bill 2005.

⁵ Schedule 1, *ibid.* (amendment to Anti-Social Behaviour Act 2003)

⁶ Clause 2, *ibid.*

⁷ Clause 1, *ibid.*

⁸ Subject to further clarification on the circumstances in which the presumption will not apply.

and fraught with practical difficulties which have not been the subject of advance consultation. In many cases, the new law may be completely unworkable.

- Proposals for the introduction of inferences, which may be drawn upon the refusal to undergo X-rays, ultrasounds or intimate searches (where it is suspected that drugs have been swallowed)⁹, do not appear to have been fully thought through as important safeguards which apply to similar, existing “inference” measures are not incorporated here.
- The proposal to classify fresh magic mushrooms as Class A drugs¹⁰ does not provide a solution to the potential public health hazard caused by the supply of magic mushrooms. Neither does it adequately address the complicating factor - that these mushrooms occur naturally, and commonly, in the UK.

The Bill appears hastily put together and there has been a lack of public consultation.

- The RIA contains errors and omissions and the legislation itself contains holes that will make it ineffectual, even on its own terms.
- There has been an unacceptable lack of consultation on key elements of the Bill. Significant sections have had very limited consultation, for others consultation is ongoing and incomplete. Some clauses have had no consultation whatsoever – in clear breach of Cabinet Office consultation guidelines¹¹. Clause 23 of the Bill, which repeals the amendment to Section 8(d) of the MDA 71 (originally passed in 2001 but never brought into practice), highlights the risks of announcing tough sounding legislation at election time and then consulting with the drugs field *after* the legislation has been passed.
- The Joint Parliamentary Committee on Human Rights report on the Bill (Feb 2005)¹² notes the “*inadequacy of the Explanatory Notes in relation to the Bill’s implications for human rights.*” The Notes “*merely recite the fact that a statement of compatibility has been given*” and “*do not identify the Convention rights engaged nor provide any reasoning in support of the bald statement of compatibility. This does not inspire confidence that human rights compatibility has been a matter of central concern in the formulation of the policy and the drafting of the legislation.*” (Note: this highly critical report was published *after* the Commons debates and Standing committee deliberations were completed).
- The pre-election “tough talk” rhetoric that accompanied the Bill’s announcement contrasts strongly with calls from the drugs field for more health focused and evidence based policy development.

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⁹ Clauses 3 and 5, Drugs Bill 2005.

¹⁰ Clause 21, *ibid.*

¹¹ <http://www.cabinetoffice.gov.uk/regulation/docs/consultation/pdf/code.pdf>

¹² <http://www.publications.parliament.uk/pa/jt200405/jtselect/jtrights/47/4702.htm>